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9 **UNITED STATES DISTRICT COURT**  
10 **WESTERN DISTRICT OF WASHINGTON**  
11 **AT SEATTLE**

12 STATE OF WASHINGTON,

13 Plaintiff,

14 v.

15 UNITED STATES DEPARTMENT OF  
16 HEALTH AND HUMAN SERVICES;  
ALEX M. AZAR, in his official capacity as  
the Secretary of the United States  
Department of Health and Human Services,

17 Defendants.  
18

NO. 2:20-cv-01105

DECLARATION OF  
MYRON BRADFORD  
"MIKE" KREIDLER

19 I, Myron Bradford "Mike" Kreidler, declare under penalty of perjury under the laws of  
20 the United States of America that the foregoing is true and correct:

21 1. I am over the age of 18, have personal knowledge of the facts and circumstances  
22 in this declaration, and am competent to testify in this matter.

23 2. I am the Insurance Commissioner for the State of Washington. I was first elected  
24 in 2000 and have served continuously since then. I was re-elected to my fifth term in 2016.  
25 Before being elected Insurance Commissioner, I received a master's degree in public health from  
26 UCLA, was a doctor of optometry, and practiced with Group Health Cooperative for

1 twenty years. I also served sixteen years in the Washington State Legislature and two years as  
2 a member of the United States House of Representatives.

3 3. As the elected Insurance Commissioner, I am responsible for managing  
4 Washington's Office of the Insurance Commissioner (OIC), which protects Washington's  
5 insurance consumers and oversees and regulates the insurance industry. The OIC currently has  
6 approximately 246 employees and a statewide network of more than 400 volunteers. Among its  
7 responsibilities, the OIC licenses and audits the 38 insurers domiciled in Washington; regulates  
8 and may revoke the authorization or registration of the more than 2,100 other insurers that do  
9 business in Washington; and tests, licenses, and regulates the more than 182,000 individuals and  
10 businesses licensed to solicit insurance in Washington. As part of its regulation of health  
11 insurance, the OIC seeks to promote, among other goals, timely and non-discriminatory access  
12 to medical care and essential health benefits.

13 4. I am familiar with the rule of the Department of Health and Human Services  
14 entitled "Nondiscrimination in Health and Health Education Programs or Activities, Delegation  
15 of Authority," 85 Fed. Reg. 37160-248 (the "Final Rule"), which was published in the Federal  
16 Register on June 19, 2020.

17 5. I have been asked to evaluate how the Final Rule will impact legal protections for  
18 Washingtonians against discrimination in health care on the basis of their pregnancy termination,  
19 sexual orientation, and transgender status or gender identity.

20 6. Through review of information produced by the Washington State Office of  
21 Financial Management (OFM) and the Washington State Department of Health (DOH), I have  
22 learned the following background facts.

23 7. The population of Washington State is approximately 7,656,200 people as of  
24 April 1, 2020. Declaration of Thea N. Mounts, ¶ 5.

25 8. OFM estimates that as of 2018, there are at least 1,385,380 people in Washington  
26 State who receive health care coverage under a health care plan established and funded directly

1 by an employer rather than through the purchase of health insurance, also called a “self-insured”  
2 or “self-funded” group health plan. Declaration of Thea N. Mounts, ¶ 7. OFM states that the  
3 number is at least this high in 2020 because more and more small and medium-sized employers  
4 are providing health care coverage for employees through a self-insured or self-funded group  
5 health plan. *Id.*

6 9. OFM also estimates that, as of 2017, there are 198,301 people in Washington  
7 State who receive employment-based health insurance for government employees as part of the  
8 Federal Employee Health Benefits Program. Declaration of Thea N. Mounts, ¶ 9.

9 10. Section 514 of the Employee Retirement Income Security Act of 1974 (ERISA),  
10 29 U.S.C. § 1144, provides that State laws relating to “self-funded” employer group health plans  
11 are superseded by ERISA.

12 11. As a result of Section 514 of ERISA, Washington state laws that prohibit  
13 discrimination in health care on the basis of pregnancy termination, sexual orientation, and  
14 transgender status or gender identity do not apply to these “self-funded” employer benefit plans.  
15 These state laws include the Washington Law Against Discrimination (WLAD), RCW  
16 49.60.030(1)(e) and RCW 49.60.178, and state law prohibiting discrimination with respect to  
17 all aspects of fully-insured health plan design and administration, RCW 48.43.0128.

18 12. Similarly, Section 3 of the Federal Employees Health Care Protection Act of  
19 1998, 5 U.S.C. § 8902(m)(1), provides that State laws are also superseded by the terms of any  
20 contract for health care coverage that is provided under the Federal Employees Health Benefits  
21 program.

22 13. As a result of Section 3 of the Federal Employees Health Care Protection Act of  
23 1998, the prohibitions of discrimination in health care on the basis of pregnancy termination,  
24 sexual orientation, and transgender status or gender identity in the WLAD, RCW 49.60.030(1)(e)  
25 and RCW 49.60.178, and in RCW 48.43.0128 do not apply to these federal employee benefit  
26 plans.

1           14.     Accordingly, because of the aforementioned provisions of ERISA and the Federal  
2 Employees Healthcare Protection Act, the health care coverage plans of approximately  
3 1,583,681 Washingtonians will not be prevented by Washington state law from discrimination  
4 on the basis of pregnancy termination, sexual orientation, or transgender status or gender identity  
5 if the Final Rule takes effect.

6           15.     DOH estimates that between 5,271 and 16,266 transgender Washingtonians are  
7 included in this group and could lose health care coverage for transgender health care services  
8 such as hormone therapies and surgical gender transition procedures if the Final Rule takes  
9 effect. Declaration of Michelle Roberts, ¶ 15.

10 EXECUTED on this 13 day of July, 2020 in Seattle, Washington.

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14 Mike Kreidler  
15 Insurance Commissioner  
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